

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 01-455-A
)	Hon. Leonie M. Brinkema
ZACARIAS MOUSSAOUI)	

DEFENDANT'S NON-CONFIDENTIAL MEMORANDUM ACCOMPANYING HIS
MOTION FOR AN ORDER PROVIDING PROSPECTIVELY FOR FILING
DOCUMENTS UNDER SEAL PURSUANT TO LOCAL CRIMINAL RULE 49(E)

Pursuant to Rule 49(E) of the Local Criminal Rules for the United States District Court for the Eastern District of Virginia, Defendant Zacarias Moussaoui, through counsel, files this non-confidential memorandum in support of his Motion to Seal filed herewith.

Non-Confidential Description of the Items to be Sealed

1. The item to be sealed (the "Sealed Material") is the attached Defendant's Ex Parte Motion.

Statement as to Why Sealing is Necessary, and
Why Another Procedure Will Not Suffice

2. Sealing is necessary in order to preserve Defendant's right to a fair trial and so as not to reveal to the public or the prosecution confidential attorney work product, including possible theories of the defense, potential avenues of investigation, legal matters to be pursued, and general defense strategies. Counsel for the Defendant has considered procedures other than sealing and none will suffice to protect this information from disclosure.

References to Governing Case Law

3. The Court has the inherent power to seal materials submitted to it. *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598 (1978) (“Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.”); *In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (“The trial court has supervisory power over its own records and may, in its discretion, seal documents if the public’s right of access is outweighed by competing interests.”); *United States v. Moussaoui*, 65 Fed. Appx. 881, 886, 2003 WL 21076836 (4th Cir. No. 03-4162) (same) (unpublished opinion); see also *In re Eye Care Physicians of America*, 100 F.3d 514, 519 (7th Cir. 1996) (affirming sealing of search warrant affidavits to protect integrity of ongoing criminal investigation); *Times Mirror Co. v. United States*, 873 F.2d 1210, 1221 (9th Cir. 1989) (affirming district courts’ orders maintaining warrant materials under seal while a pre-indictment investigation is under way); *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988) (approving the sealing of search warrant affidavits and other materials attached to the warrants given that the criminal investigation was ongoing); *United States v. Wuagneux*, 683 F.2d 1343, 1351 n.6 (11th Cir. 1982) (noting the power of the district court to seal documents “to protect the secrecy of ongoing [criminal] investigations and grand jury proceedings”); *Arizona v. Manypenny*, 672 F.2d 761, 765 (9th Cir. 1982) (acknowledging the judicial power to place documents under seal “in order to correct the legal process or avert its malfunction”); *United States v. Hubbard*, 650 F.2d 293, 315-16 (D.C. Cir. 1980) (noting that “[t]he public has in the past been excluded, temporarily or permanently, from court proceedings or the records of court proceedings to protect private as well as public

interests: to protect trade secrets, or the privacy and reputation of victims of crimes, as well as to guard against risks to national security interests, and to minimize the danger of an unfair trial by adverse publicity”) (citations omitted); *Shea v. Gabriel*, 520 F.2d 879, 882 (1st Cir. 1975) (affirming district court’s refusal to order pre-indictment disclosure of a sealed affidavit in support of a search warrant); *In re Braughton*, 520 F.2d 765, 766 (9th Cir. 1975) (affirming the sealing of an arrest affidavit because disclosure might have jeopardized criminal investigations of individuals not yet in custody).

Period of Time the Items Will Remain Under Seal, and
How the Items Will be Handled Upon Unsealing

4. The Sealed Material should remain sealed until the penalty phase trial commences, at which time it may be automatically unsealed.

Conclusion

Accordingly, Defendant respectfully requests that his Motion to Seal be granted.

Respectfully Submitted,

ZACARIAS MOUSSAOUI
By Counsel

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